Filed January 8, 2003

Jack L. Wagner, Clerk
In the United States District Court
For the Eastern District of California

JEFFREY WELTON NUNES,
Petitioner,

v.

G.A. MUELLER, Warden
Respondent

No. CIV S-98-0106 LKK JFM P

ORDER

Petitioner, a state prisoner proceeding through counsel, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On November 20, 2002, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. On December 13, 2002, the court granted respondents an extension of time until December 19, 2002 to file objections. On December 3, 2002, petitioner filed a request to adopt the findings and recommendations, with one modification. Petitioner asks the court to modify the recommendations to grant relief under both prongs of § 2254(d), rather than under 28 U.S.C. § 2254(d)(1). Respondent filed objections to the findings and recommendations on December 16, 2002.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis. Thus, petitioner's request to modify the recommendations will be denied.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed November 20, 2002, are adopted in full;

2. Petitioner's application for a writ of habeas corpus is granted in part and denied in part:

a. Petitioner's ineffective assistance of counsel claim as to the plea offer is granted, and the state is directed to vacate the second degree murder conviction and reinstate the voluntary manslaughter plea offer to petitioner;

b. The remainder of petitioner's claims are denied; and

3. Petitioner's December 3, 2002 request to modify is denied.

DATED: January 7, 2003

/s/
LAWRENCE K. KARLTON
United States District Judge